

**State of New Hampshire
Board of Medicine
Concord, New Hampshire 03301**

In the Matter of:
James Schmitz, M.D.
No.: 7506
(Misconduct Allegations)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of medicine, the New Hampshire Board of Medicine ("Board") and James Schmitz, M.D., ("Dr. Schmitz " or "Respondent"), do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 329:17, I, 329:18 and 329:18-a, and Medical Administrative Rule ("Med") 206 and 210, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by physicians. Pursuant to RSA 329:18-a, III, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted Respondent a license to practice medicine in the State of New Hampshire on February 5, 1987. Respondent held license number 7506, which expired on July 30, 2005 when Respondent did not submit an application for renewal.. Respondent now practices medicine at Scott & White Memorial Hospital located at 2401 S 31st Street, Temple, Texas 76508.
3. In September of 1999, Respondent notified the Board of the outcome of an administrative proceeding brought against Respondent by the Medical Executive

Committee of Portsmouth Regional Hospital ("MEC") in response to a patient complaint relating to the scheduling of her angiogram.

4. Respondent timely provided information to the Board concerning this event.
5. In response to this notification, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's conduct and the findings made by the MEC at Portsmouth Regional Hospital.
6. In March 2005, Respondent was notified that the Board was considering action to resolve the 1999 events.
7. The Board certifies that its investigation and consideration of this matter has been free of the participation of any Board member now or formerly affiliated with the Portsmouth Regional Hospital medical staff.
8. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would provide evidence that Respondent engaged in professional misconduct, in violation of RSA 329:17, VI (c) and (d) and Med 501.02 (h), by the following facts:
 - A. On or about January 24, 1995, Respondent agreed to a Settlement Agreement which was issued by the Board to resolve allegations that Respondent violated RSA 329:17, VI (d) and *American Medical Association Principle of Medical Ethics, Principle II*.
 - B. On or about May 26, 1998, Respondent was scheduled to perform a cardiac catheterization of Patient A at Portsmouth Regional Hospital ("Hospital"). Respondent attended a Department of Medicine meeting at the Hospital at the time at which the procedure was scheduled. Respondent was unable to perform the procedure for Patient A because the catheterization laboratory was scheduled

for other procedures at the time he returned from the meeting. Respondent informed Patient A and her husband that the scheduled procedure needed to be rescheduled because the operating room was unavailable but failed to inform Patient A that he had chosen to attend the Department of Medicine meeting.

- C. On or about May 18, 1999, the MEC at Portsmouth Regional Hospital made findings against Respondent in connection with the complaint filed by Patient A. These findings include that Respondent did not accurately or completely discuss with Patient A the reason for the cancellation of her scheduled cardiac catheterization; and that Respondent failed to respond to the inquiries made by Dr. Hekmiller, the physician investigating the complaint, in a direct and forthright manner.
9. The Board finds that Respondent acted in a manner described in paragraph 5 above. The Board concludes that such conduct violated RSA 329:17, VI (c), (d) and Med 501.02 (h) and *American Medical Association Code of Medical Ethics, Principle II*.
10. In order to fully resolve these matters, Respondent has agreed to these facts and consents to the Board imposing the following discipline, pursuant to RSA 329:17, VII:
- A. Respondent is REPRIMANDED.
- B. Respondent successfully attended and completed a program ^{entitled Health} ~~for disruptive~~ _{for Healer} physicians at the University of Alabama in ^{February 2003} ~~December 2002~~ since his relocation to Texas. Within ten (10) days of the issuance of this Settlement Agreement, Respondent shall provide documentation to the Board of his completion of this program.

11. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d), and a separate and sufficient basis for further disciplinary action by the Board.
12. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.
13. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
14. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to them other than those terms and conditions expressly stated herein.
15. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
16. Respondent understands that their action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
17. Respondent has had the opportunity to seek and obtain the advice of an attorney of their choosing in connection with their decision to enter into this agreement.

18. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have prejudiced their right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
19. Respondent is not under the influence of any drugs or alcohol at the time they signs this *Settlement Agreement*.
20. Respondent certifies that he has read this document titled *Settlement Agreement*. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, he waives these rights as they pertain to the misconduct described herein.
21. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

FOR RESPONDENT

*N.H. Board of Medicine and James Schmitz, M.D.
Settlement Agreement*

Date: 12/10/05

J. Schmitz
James Schmitz, M.D.
Respondent

Date: 1/3/06

Kevin M. Fitzgerald
Kevin M. Fitzgerald, Esq.
Counsel for Respondent

FOR THE BOARD/*

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: April 11, 2006

Penny Taylor
(Signature)

Penny Taylor
(Print or Type Name)
Authorized Representative of the
New Hampshire Board of Medicine

/* Recused Board members:

Cynthia Cooper, MD
Kevin Costin, PA
